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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,989	03/23/2001	Alexander Gad	60807-A-PCT-US/JPW/GJG	7587

7590

02/11/2004

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EXAMINER

HUYNH, PHUONG N

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/816,989	Applicant(s) GAD ET AL.	
	Examiner Phuong Huynh	Art Unit 1644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires Three months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 123,124,127,132,133,152,153 and 155-157.

Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 8/6/02; 8/26/02.
10. ☒ Other: Interview summary

Continuation of 3.

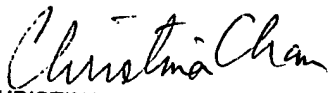
Applicant's reply has overcome the following rejection(s):

The new matter rejection of claims 157-165 under 35 U.S.C. 112, first paragraph is hereby withdrawn in view of the amendment filed 12/29/03.

The rejection of claims 123-125, 127, 129-142, and 144-166 under 35 U.S.C. 112, second paragraph is hereby withdrawn in view of the amendment filed 12/29/03.

Continuation of 5. does NOT place the application in condition for allowance because:

The enablement and written description rejections of Claims 123, 124, 127, 132, 133, 152, 153 and 155-157 under 35 U.S.C. 112, first paragraph are maintained because the term "mammal" is a genus, including species such as whale. There is insufficient guidance as to which species other than human and mouse model are afflicted with multiple sclerosis. The specification discloses only a method for treating human afflicted with multiple sclerosis with a polypeptide consisting of SEQ IDNO: 2 or 7 using a mouse model female (SJL/J x BALB/c) mice where EAE in mice is induced with spinal cord homogenate. There is insufficient in vivo working example demonstrating that the claimed method could treat every species in a genus. Other than the species of human and mouse, the claimed method of treating any mammal afflicted with multiple sclerosis is not enabled and not adequately described. With regard to claims 152-153, and 155-157, other than the mouse data, there is insufficient guidance as how to predict which person within the human species, let alone which one within the genus of mammal, would have multiple sclerosis. The specification discloses only a mouse model where EAE is induced by injection with spinal cord homogenate. There is no showing in the specification as filed that the claimed method can delay the onset of multiple sclerosis in human, for example.


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